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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,880	02/27/2004	Brian J. Conaway	3984500-149029	9552

7590 06/22/2005

Porter, Wright, Morris & Arthur LLP
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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,880

Applicant(s)

CONAWAY ET AL.

Examiner

Nathan S Mammen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15, 16 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 16, 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

HCC

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 7-12, 20-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,131,553 to Rethorn, cited in previous Office action.

The Rethorn '553 patent discloses a rake comprising a head (15), an elongate handle (17) extending from the head, a plurality of parallel, spaced-apart, flexible tines (16) extending from the head opposite the handle, a brace (24) movable along the tines from a first position to a second position, thereby changing the effective stiffness of the tines (see Fig. 2), and a locking device (28) releasably securing the brace to the head in the first and second positions. The locking device is selectively operable to secure the brace to the head in the first and second positions. The brace (24) moves relative to the handle as the brace moves between the first and second positions. The spacing between the tines remains unchanged as the brace moves between the first and second positions.

Regarding claims 2, 7-12, 21-24: Each of the tines (16) extend through separate openings (25) in the brace. The locking device includes interlocking protrusions (18, 20). The locking device moves the brace to positions between the first and second position (i.e., inherently, the brace (24) moves between the solid line and phantom line positions indicated in Fig. 2). The locking device comprises a rotatable knob (28). The tines (16) are unremovable from the head

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(15). The handle extends to the tines. The head (15) includes a socket for receiving the handle (see Fig. 2).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-6, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,131,553 to Rethorn.

The Rethorn '553 patent discloses the claimed invention, as stated in paragraph 2 above, except for the particularly claimed shapes or materials of construction. However, it would have been an obvious matter of design choice to construct the rake with T-shapes or cylindrical shapes or of plastic and/or metal materials.

Response to Arguments

5. Applicants' arguments filed 6/9/05 have been fully considered but they are not persuasive.

As amended, the independent claims now recite a locking device that is selectively operable to releasably secure the brace to the head in the first and second positions to prevent movement of the brace relative to the tines. As stated above, the Rethorn '553 patent discloses a brace (24) that moves along the tines (16). The Rethorn '553 patent further discloses a locking mechanism (lever 28). A user, squeezing the locking mechanism (28) against the handle, moves the brace along the tines from a first to a second position (shown in phantom in Fig. 2). The

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locking mechanism (28), through the wire member (29), prevents movement of the brace. In other words, when a user is holding the locking mechanism (28) against the handle, the brace is secured against movement relative to the tines. Similarly, when the locking mechanism is in the released position (shown in solid lines in Fig. 2), the brace is secured against movement relative to the tines.

While the locking mechanism of the Rethorn '553 patent is different than the locking mechanism Applicants describe in their specification, the locking mechanism Applicants describe is not the one they claim. Applicants would distinguish their locking mechanism over the Rethorn '553 patent if, for example, they included the specifics of the locking mechanism as described in paragraph 28. The current claims are not that specific, and thus the claims remain anticipated by Rethorn.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (571) 272-6991. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (571) 272-6998. The fax number for this Group is (703) 872-9306.



Nathan S. Mammen
Patent Examiner
Group 3600

NSM
6/20/05